

No. 8129

IN THE  
United States  
Circuit Court of Appeals<sup>10</sup>  
FOR THE NINTH CIRCUIT.

FEDERAL HOUSING ADMINIS-  
TRATION, on Behalf of the United  
States of America,

*Appellant,*

*vs.*

WM. H. MOORE, Jr., as Trustee in  
Bankruptcy of the Estate of PIO-  
NEER AUTO LAUNDRY, a Cor-  
poration, Bankrupt,

*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, IN  
AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION

FILED

TRANSCRIPT OF RECORD

DEC 31 1936

PAUL P. O'BRIEN,

CLERK



No. ....

IN THE  
United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT.

In the Matter of PIONEER AUTO  
LAUNDRY, a corporation, Bank-  
rupt.

FEDERAL HOUSING ADMINIS-  
TRATOR on behalf of the United  
States of America,

Appellant,

vs.

PIONEER AUTO LAUNDRY, a cor-  
poration,

Appellee.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, IN  
AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION

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TRANSCRIPT OF RECORD

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(Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.)

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

PEIRSON M. HALL  
United States Attorney

ROBERT WINFIELD DANIELS  
Assistant United States Attorney

Federal Building  
Los Angeles, California

For Appellee:

CRAIG & WELLER  
J. P. KELEHER

Board of Trade Building  
Los Angeles, California

UNITED STATES OF AMERICA, ss.

TO WM. H. MOORE, JR., Trustee in Bankruptcy, and  
Craig & Weller, his Attorneys: Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 25 day of November, A.D. 1936, pursuant to Order Allowing Appeal filed October 26, 1936, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled In the Matter of PIONEER AUTO LAUNDRY, a corporation, Bankrupt, No. 26120-J, in Bankruptcy, wherein Federal Housing Administrator on behalf of the United States of America is Claimant and Appellant, and you are Appellee, to show cause, if any there be, why the Order entered herein on the 16th day of October, 1936, confirming the Order of the Referee in Bankruptcy of June 17, 1936, disallowing the claim of the Federal Housing Administrator as a preferred claim in the said Bankruptcy matter mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. P. JAMES, United States District Judge for the Southern District of California, this 26 day of October, A.D. 1936, and of the Independence of the United States, the one hundred and sixty-first.

WM. P. JAMES

U. S. District Judge for the Southern District  
of California.



Receipt of a copy of the foregoing citation, petition for appeal, assignments of error, and order allowing appeal is acknowledged this 27th day of October, 1936.

CRAIG & WELLER,

By J. P. Keleher

Attorneys for Trustee.

(Endorsed): Filed Oct 28-1936 at 9:09 A.M. R. S. Zimmerman By F. Betz—Deputy Clerk.

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IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

In the Matter of

PIONEER AUTO LAUNDRY, a corporation,

Bankrupt.

In Bankruptcy No. 26120-J

AGREED STATEMENT OF THE CASE IN LIEU  
OF RECORD, PURSUANT TO EQUITY RULE 77.

The parties hereto, believing that the questions presented by the appeal herein from an order of the above-entitled Court, dated October 16, 1936, affirming on review an order of the Honorable Hugh L. Dickson, Referee in Bankruptcy of this Court, before whom the administration of the debtor estate is pending, can be determined by the United States Circuit Court of Appeals, for the Ninth Circuit, to which an appeal has been

taken and allowed, without an examination of all the pleadings and evidence, present this statement of the case pursuant to Equity Rule 77 showing how the questions arose and were decided in said District Court, and setting forth such of the facts alleged and proved or sought to be proved as are deemed essential to a decision of such questions by said United States Circuit Court of Appeals for the Ninth Circuit, as follows:

On July 31, 1935, Pioneer Auto Laundry, a corporation, was adjudged a bankrupt in this Court;

On the 3rd day of December, 1935, the Federal Housing Administrator on behalf of the United States of America filed its claim, which is in words and figures as follows:

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IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA, CENTRAL DIVISION

In the Matter of

PIONEER AUTO LAUNDRY, a corporation,  
Bankrupt.

In Bankruptcy No. 26120-J

DISTRICT OF COLUMBIA : ss

GEORGE H. ROWE, JR., being duly sworn deposes and says:

That he is over twenty-one years of age, is a member of the Bar of the District of Columbia and is the Chief of the Collection Section of the Federal Housing Administration.

That on December 21, 1934, the above corporation executed a Modernization Loan note in the sum of Two thousand (\$2000.00) dollars to the Seaboard National Bank of Los Angeles. They subsequently defaulted in their monthly payments and the Seaboard National Bank of Los Angeles duly filed claim with the Federal Housing Administrator, which claim was paid in full on September 27, 1935, in the sum of one thousand five hundred and seventy-nine dollars (\$1579.78) and seventy-eight cents.

The Seaboard National Bank of Los Angeles then assigned all their right, title and interest in and to this defaulted obligation to the Federal Housing Administrator, acting for and on behalf of the United States of America.

Deponent alleges that the above-named bankrupt is indebted to the Federal Housing Administrator in the sum of one thousand five hundred and seventy-nine dollars (\$1579.78) and seventy-eight cents, plus interest at the legal rate from the 27th day of September, 1935, and that no part of said amount has been paid.

Since this is a claim of the United States of America, it is respectfully requested that this claim be classified as a preferred claim under Section 3466 of the Revised Statutes of the United States Government.

In support of this claim deponent encloses photostatic copy of the Property Owner's Credit Statement dated December 12, 1934, and photostatic copy of the Note dated December 12, 1934, bearing the assignment to the Federal Housing Administrator from the Seaboard National Bank of Los Angeles, together with photostatic copy of our "Work Sheet" showing how this claim was approved for payment in the sum of one thousand five

hundred and seventy-nine dollars (\$1579.78) and seventy-eight cents and photostatic copy of FHA Form 13 showing that the Seaboard National Bank of Los Angeles was reimbursed in the sum of one thousand five hundred and seventy-nine dollars (\$1579.78) and seventy-eight cents on the 27th day of September, 1935, by check No. 38343, D. O. Voucher No. 457137.

GEORGE H. ROWE, JR.  
Chief, Collection Section  
Federal Housing Administration

Sworn to before me this 17 day of October, 1935.

(SEAL) KATHERINE FORD  
Notary Public

DISTRICT OF COLUMBIA, ss:

No. 79258

I, FRANK E. CUNNINGHAM, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Katherine Ford before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to said instrument and impression of seal thereon are genuine.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D.C., the 18 day of Oct. A.D. 1935.

Frank E. Cunningham, Clerk  
By Andrew A. Horner,  
Assistant Clerk.

FHA Form No. 13

307

FEDERAL HOUSING ADMINISTRATION  
MEMORANDUM

Date September 28, 1935

To: Collection & Fraud Section

Subject: CLAIM FILED BY The Seaboard National Bank  
of Los Angeles Re: Pioneer Auto Laundry MCP—235

This is to advise that a check has been issued in settlement.

Amount \$1,579.78

Date Paid Sept. 27, 1935

Check Number 38343

D. O. Voucher No. 457137

Claims Audit Unit

9253

Form FHE 7a

Form approved by  
Comptroller General U. S.

February 27, 1935

Vou. No. ....

Claim No. MCP 235

Public Voucher for Payment of Losses on Defaulted Notes  
Insured Under Title I, Section 2, National Housing Act  
(Voucher prepared at Washington, D. C.

September 14, 1935)

(Date)

In box at right:

PAID BY

(For use of Paying Office)

Federal Housing Administration

Appropriation: OX 680 Renovation & Modernization  
Loans and Insurance FHA Allocation from RFC.

THE UNITED STATES, Dr., To The Seaboard National  
Bank of Los Angeles

(Payee)

Address 558 So. Spring St., Los Angeles, California

Payee's Account No.....

I CERTIFY that the attached statement of claim, as certified to by claimant on Form FHE 7, has been examined and is accepted under the contract terms and conditions; that the insured obligation and other collateral documents in support of this claim, as stated therein

(with the exceptions noted), have been received, examined, and separated from this application for the purpose of effecting collection. I further certify that the 20% limitation prescribed by Title I, Section 2, of the National Housing Act will not be exceeded by payment of this claim in the amount set forth below.

Total amount of notes insured, \$213,448.68 as of 9/7/35. Total claims paid, \$2,389.68 including this claim.

CLAIM No. MCP 235. Approved for \$1,579.78. Date September 14, 1935.

(As per Work Sheet on reverse side)

FEDERAL HOUSING ADMINISTRATION

.....  
Title Comptroller

Box on left:

GENERAL ACCOUNTING OFFICE  
PREAUDIT

Certified for payment in the sum of \$.....

J. R. McCARL  
*Comptroller General of  
the United States*

By.....

Paid by Check No....., dated....., for \$..... (on Treasurer of the United States in favor of payee named above.)

## WORK SHEET

Claimant The Seaboard National Bank of Los Angeles  
Address 558 So. Spring Street Los Angeles, California  
Date September 14, 1935

Insurance Contract No. 00745 Date of contract August  
10, 1934

- (a) Maker(s) of note Pioneer Auto Laundry
- (b) Address of maker(s) 901 North Vine Street, Los Angeles, California
- (c) Date of note December 21, 1934
- (d) Face amount of note, \$2,000.00



|  | Certified inf.<br>furn. by claim-<br>ant on Form<br>FHE 7 | Determination of<br>amount due |        |            |
|--|---|--------------------------------|--------|------------|
| (1) Discount (item <i>f</i> , Form FHE 7).....   | \$ 183.82   | \$                             | 183.82 |            |
| (2) Interest for full term of loan (item <i>h</i> ,<br>Form FHE 7).....  | \$ None   | \$                             |        |            |
| (3) Initial fees and service charges (item<br><i>g</i> , Form FHE 7).....  | \$ None   | \$                             |        |            |
| (4) Total .....  |   | \$                             | 183.82 |            |
| (5) Less dividends or interest on deposits,<br>estimating if necessary as per Regula-<br>tions (item <i>i</i> , Form FHE 7)..... | \$ None   | \$                             |        |            |
| (6) Net charge for full term of loan.....  |   | \$                             | 183.82 |            |
| (7) Amount actually expended for title<br>search, recording charges, etc. (item <i>j</i> ,<br>Form FHE 7).....                   | \$ None   |                                |        |            |
| (8) Less expense allowed, if any, for title<br>seach, etc. ....  |   | \$                             | \$     |            |
| (9) Charge to be prorated (item 6 minus<br>item 8) .....   |   | \$                             | 183.82 |            |
| (10) Factor to be used in proration of charge<br>.36667 .....  |   |                                |        |            |
| (11) Charge prorated to default, (item 9<br>times item 10).....  |   | \$                             | 67.40  | \$ 67.40   |
| (12) Proceeds of loan (item <i>k</i> , Form FHE 7)...  | \$1,816.18  | \$1,816.18                     |        | \$1,816.18 |
| (13) Total .....   |   |                                |        | \$1,883.58 |
| (14) Total received in regular installments<br>(see Schedule A).....   | \$ 333.36   | \$ 333.36                      | \$     | 333.36     |
| (15) Net unpaid principal at time of default....   |   |                                |        | \$1,550.22 |
| (16) Payments received after default, other<br>than those credited to regular install-<br>ments (see Schedules B and C).....     | \$ None   | \$                             |        | \$         |
| (17) NET UNPAID PRINCIPAL (item 15 minus<br>item 16) .....   |   |                                |        | \$1,550.22 |

|  | Certified inf.<br>furn. by claim-<br>ant on Form<br>FHE 7 | Determination of<br>amount due | Line code |
|--|---|--------------------------------|-----------|
| (18) UNCOLLECTED EARNED INTEREST FROM<br>DATE OF DEFAULT at 6% per annum<br>(adjusted to September 14, 1935):<br>on \$1,550.22 from 3/21/35 to 9/14/35 |   | \$ 29.56                       |           |
| “ ..... “ ..... “ .....  |   | \$ \$                          |           |
| “ ..... “ ..... “ .....  |   | \$ \$                          |           |
| “ ..... “ ..... “ .....  |   | \$ \$                          |           |
|  |   | \$ 29.56                       | 2         |
| (19) UNCOLLECTED LATE CHARGES not to ex-<br>ceed 5 cents for each dollar for each pay-<br>ment more than 15 days in arrears (see<br>Schedule A) .....  | \$ None   | \$                             | 3         |
| (20) UNCOLLECTED COURT COSTS (item <i>s</i> ,<br>Form FHE 7).....  | \$ None   | \$                             | 4         |
| (21) ATTORNEY'S FEES, if incurred (item <i>u</i> ,<br>Form FHE 7; not to exceed 15% of<br>item <i>t</i> , Form FHE 7).....                             | \$ None   | \$                             | 5         |
| (22) Handling fee of \$5 for judgment se-<br>cured (item <i>o</i> , Form FHE 7).....   | \$ None   | \$                             |           |
| (23) Amount collected subsequent to return<br>of unsatisfied property execution (see<br>Schedule C) .....  | \$ None   |                                |           |
| (24) Additional handling fee (not to exceed<br>5% of item 23).....   | \$ None   | \$                             |           |
| (25) TOTAL HANDLING FEE (item 22 plus item<br>24) .....  |   | \$                             | 6         |
| (26) TOTAL CLAIM FOR INSURED LOSSES (items<br>1 to 6 of Regulation No. 14).....  |   | <hr/> \$1,579.78               |           |



Jan 18 '35 All Right, Title and Interest of the Under-  
 Feb 18 '35 signed is Hereby Assigned to the Federal  
 Mar 18 '35 Housing Administrator Acting on Behalf  
 Apr 15 '35 of the United States of America  
 May 15 '35 SEABOARD NATIONAL BANK OF  
 LOS ANGELES  
 (828) By Chas. F. Warne, Trust Officer.

| DATE       | PAID  | BALANCE |
|------------|-------|---------|
| Jan 21 '35 | 83.34 | 1916.66 |
| Feb 20 '35 | 83.34 | 1833.32 |
| Mar 22 '35 | 83.34 | 1749.98 |
| Apr 24 '35 | 83.34 | 1666.64 |

### PIONEER AUTO LAUNDRY

901 North Vine Street  
 HOLLYWOOD

December 12, 1934

Seaboard National Bank  
 6601 Hollywood Boulevard  
 Hollywood, California

Attention: Mr. W. P. Ralston, Vice-President.

Dear Sir:

Attached Form 3—Property Owner's Statement—for the purpose of securing a modernization credit through the Federal Housing Administration. We have filled out all of the blanks in this but it seems to us you might wish the following information:

We are Lessees for five years under a lease that requires us to make all alterations and improvements.

We are reopening a business that has operated since 1927. The minimum annual gross income during this period of seven years, exclusive of gasoline sales, was \$44,667.42. We have set down this figure as "other income."

In addition to the work to be covered under this loan we have arranged with the Union Oil Company of California to advance sums with which to install and construct a modern super-service gas station across the south-east corner of the property and to be reimbursed therefor out of gasoline sales. The income from our lease with them exclusive of the amortization of the cost of the improvements is estimated at a minimum of \$400 per month. (Confidential please!)

The income from a restaurant now operating on the property will range from \$30 to \$50 per month. Our other income will be derived from the auto laundry department; the wholesale and retail distribution and sales of tires and batteries; the paint, brake, electrical and lubrication departments and the sales of lubricants, accessories and other items.

The money received is to be used solely for the purpose of repairs and modernization of the present buildings exclusive of the gas service station, which work will include roofing, paving, carpenter work, fixed partitions, brick and tile work, water, sewer, and air lines, electrical installations for lighting and power, painting, flooring, and other built-in items.

We submit as references

Buttress & McClellan Ltd.,  
1013 East 8th Street,  
Phone TUcker 2351.

Mr. E. H. Blanche,  
Partner of Andrews & Andrews,  
Attorneys-at-law,  
414 Union Oil Building,  
Phone TRINity 4794.

Mr. L. L. Doty, Insurance,  
Lane Mortgage Building,  
Phone TRINity 9141.

We are ready to start work immediately and would appreciate hearing from you at your early convenience.

Very truly yours,

JOHN HARNISH  
President

JH:b  
Enc.

PIONEER AUTO LAUNDRY  
901 North Vine Street  
HOLLYWOOD

December 8, 1934

The Pioneer Auto Laundry is a California corporation with the following directors:

John Harnish  
Charles R. Hadley  
Doris Chatterton

Los Angeles

“ “

“ “

The officers are:

John Harnish

Edgar P. Lyons

Earl C. Vesper

President

Secretary-Treasurer

General Manager

John Harnish, age 46; married; one child; has lived in Los Angeles since 1904 and has been engaged principally as an industrial engineer and builder during the past 25 years. He organized and was Vice-President and General Manager of the Austin Company of California and the Austin Securities Company. Since retiring from these companies about two years ago he has been engaged in ranching in the Montecito district of Santa Barbara County. He is President and principal stockholder of both the John Harnish Company and The Business Investment Company.

Charles R. Hadley, age 40 years; married; is a principal stockholder of the Charles R. Hadley Company.

Doris Chatterton is an employee in the offices of Andrews and Andrews, 414 Union Oil Building, Los Angeles, Attorneys for the company.

Edgar P. Lyons, age 42 years; married; one child; is a Partner of Lyons and Lyons, Certified Public Accountants of 639 South Spring Street, Los Angeles.

Karl C. Vesper, age 35 years; married; one child; has resided in Los Angeles for the past eight years. In the past years he has been with the Standard Oil Company of California and interested in the general merchandising business. More recently he has been in charge of the San Diego and Pasadena office of the E. H. Rollins Company and the Pacific Company respectively. For two years he was a part owner in a national advertising medium, and the last ten months has been engaged in general automotive merchandising.

Our company has a lease for the premises at 901 North Vine Street, fronting 100 feet on Vine, to a depth of 265 feet on Willoughby which includes one of the most modern auto laundries and automotive service stations in Hollywood. Arrangements have been made to install a super-service gas station on the Vine Street frontage. The lease is at a very favorable rate considering the fact that the original investment in land and buildings probably exceeded \$75,000.

Thereafter, on the 15th day of April, 1936, William H. Moore, Jr., Trustee in Bankruptcy herein, filed his objections to the claim of the Federal Housing Administrator for priority in said sum of \$1,579.78, in words and figures as follows:

[TITLE OF COURT AND CAUSE]

OBJECTIONS TO CLAIM FEDERAL HOUSING  
ADMINISTRATION PRIORITY—\$1579.78.

“Now comes Wm. H. Moore, Jr., the duly elected, qualified and acting Trustee herein, and objects to the



allowance of the priority claim filed herein by Federal Housing Administration in the amount of \$1579.78, on the following grounds, to-wit:

“That said Federal Housing Administration is an independent entity, created under what is known as the ‘National Housing Act,’ with no sovereign or attributes of the United States, and expressly authorized as an independent entity to sue and to be sued in any court of competent jurisdiction, state or federal, and that said claim is only entitled to be allowed as a general and ordinary claim.

“Dated: April 15, 1936.

Wm. H. Moore, Jr.  
Trustee

CRAIG & WELLER,

By J. P. Keleher

Attorneys for Trustee.”

Thereafter, on the 5th day of May, 1936, a hearing was had before said Referee in Bankruptcy to determine the status of said Federal Housing Administrator’s claim on behalf of the United States of America;

On the 17th day of June, 1936, said Referee in Bankruptcy entered his order disallowing said claim of the Federal Housing Administrator on behalf of the United States of America as a preferred and prior claim, and allowing same as a general claim, which order is in words and figures as follows:

[TITLE OF COURT AND CAUSE]

ORDER DISALLOWING CLAIM OF FEDERAL  
HOUSING ADMINISTRATION AS PRIOR  
AND ALLOWING SAME AS A  
GENERAL CLAIM

“Objections to the allowance of the claim of Federal Housing Administration in the sum of \$1579.78 as a prior claim, having been filed, and the matter having been duly brought on for hearing on May 5, 1936, at the hour of 10:00 o'clock, A. M., before the undersigned Referee in Bankruptcy, at his Court Room, and the Trustee appearing in person and by counsel, and the Federal Housing Administration appearing by its Attorney Peirson M. Hall, United States Attorney, (Robert Winfield Daniels, Assistant United States Attorney, of counsel), and testimony having been taken and the law having been duly argued and briefed, and the Court being fully advised in the premises, finds:

“That the Federal Housing Administration is an independent entity, created under the National Housing Act; that it has no sovereign attributes of the United States; that it is expressly authorized as an independent entity to sue and to be sued in any court of competent jurisdiction of the United States, or of any state, and that the debt in the sum of \$1579.78 is due and owing to the Federal Housing Administration and not to the United States, and is entitled to be allowed only as a general claim,

IN CONSIDERATION of the foregoing, and on motion of Craig & Weller, Attorneys for the Trustee, (J. P. Keleher of counsel), it is

“ORDERED that the claim of the Federal Housing Administration in the sum of \$1579.78 herein filed as a prior claim be, and the same hereby is disallowed as a prior claim, but allowed as a general unsecured claim in the sum of \$1579.78.

“Done at Los Angeles, in the Southern District of California, this 17th day of June, 1936.

HUGH L. DICKSON

Referee in Bankruptcy.”

Thereafter, on the 21st day of July, 1936, under Rule 84 of the United States District Court said Federal Housing Administrator filed his Petition for Review of said Referee's Order, as follows:

[TITLE OF COURT AND CAUSE]

PETITION FOR REVIEW OF REFEREE'S ORDER

“Now comes the Federal Housing Administrator in his official capacity on behalf of the United States of America, and by his counsel files herewith his Petition for Review of the Order of Honorable Hugh L. Dickson, Referee in Bankruptcy, made on the 17th day of June, 1936, and says that the said Referee erred as follows:

“1. In ordering and adjudging that the Federal Housing Administration is an independent entity and that it has no sovereign attributes of the United States;

“2. In finding that the debt in the sum of \$1,579.78 is due and owing to the Federal Housing Administration and not to the United States;

“3. In finding that said claim should be allowed as a general claim and not as a preferred claim; and

“4. In allowing said claim generally instead of allowing the same as a prior and preferred claim.

“WHEREFORE, the said Federal Housing Administrator prays that said Order entered herein by the Honorable Referee on the 17th day of June, 1936, be reviewed by the Honorable Judges of the District Court of the United States for the Southern District of California, Central Division, and that said Order be adjudged erroneous and void, and that said Referee be ordered to allow said claim as a preferred claim under Section 3466 of the Revised Statutes of the United States of America.

PEIRSON M. HALL,

United States Attorney,

ROBERT WINFIELD DANIELS,

Asst. United States Attorney.

“STATE OF CALIFORNIA

County of Los Angeles—ss

“ROBERT WINFIELD DANIELS, being first duly sworn, deposes and says: That he is an Assistant United States Attorney for the Southern District of California, and as such one of the Counsel for Petitioner, Federal Housing Administrator; that he has read the foregoing Petition for Review and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are herein stated on information and belief, and as to those matters he believes it to be true.

ROBERT WINFIELD DANIELS.

“Subscribed and Sworn to before me this 10th day of July, 1936.

MARY S. HAINES

Mary S. Haines, Notary Public, County of Los Angeles, State of California. My commission expires January 28, 1937.

(SEAL)”

Thereafter said Referee in Bankruptcy prepared his Certificate of Review, which is in words and figures as follows:

[TITLE OF COURT AND CAUSE]

#### REFEREE'S CERTIFICATE ON REVIEW

“TO THE HONORABLE WM. P. JAMES, DISTRICT JUDGE:

“I, HUGH L. DICKSON, Referee in Bankruptcy, do hereby certify:

“That, in the course of such proceeding, an order, copy of which is annexed hereto, was made and entered on the 17th day of June, 1936. That on or about July 10, 1936, the Federal Housing Administrator, feeling aggrieved thereat, filed a petition for review of said order dated June 17, 1936, praying that said order be adjudged erroneous and void, and that said Referee be ordered to allow the claim of Federal Housing Administrator to be filed in the amount of \$1579.78 as a preferred claim under §3466 of the Revised Statutes of the United States of America.

“That a summary of the evidence and the question involved in the review herein is as follows:

“On December 21, 1934, bankrupt executed its promissory note for \$2,000, payable to Seaboard National Bank of Los Angeles, with interest at 7% per annum, and payable in installments of \$83.34 beginning on January 21, 1935. This note was based upon a loan by the bank of its money to the bankrupt and there are no endorsements on said note, it being the obligation of the bankrupt.

“The bankruptcy petition herein was filed on July 9, 1935, and according to the claim of Federal Housing Administrator and its exhibits, the Federal Housing Administration, on September 28, 1935, paid to the Seaboard National Bank of Los Angeles the sum of \$1579.78, the amount then due and owing by the bankrupt on the original note in the amount of \$2,000. At the time of the filing of the bankruptcy petition Seaboard National Bank of Los Angeles was the owner of the claim amounting to \$1579.78, and it was not until approximately September 28, 1935 that the Federal Housing Administration by payment of the claim and per assignment to it by Seaboard National Bank of the note became the owner of the claim. As will appear from an examination of the claim, there was not attached to it in accordance with U. S. Supreme Court General Order XXI (3), a deposition of the owner (Seaboard National Bank) at the time of the commencement of the proceedings, although the authorities are to the effect that the United States (not conceding that F. H. A. is the United States), like any private litigant, is bound by the provisions of the Bankruptcy Act.

“Section 63(a) of the Bankruptcy Act governing debts which may be proved includes:

“(1)

A fixed liability as evidenced by a judgment, or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not,’ etc. etc.

“Section 57(i) provides:

“ ‘Whenever a creditor, who has a claim against a bankrupt estate and is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor’s name, and if he discharge such undertaking in whole or in part, he shall be subrogated to that extent to the rights of the creditor.’

“Even if the F. H. A. had endorsed or guaranteed the undertaking of Seaboard National Bank, it would only have had the right to prove the claim and be subrogated to the rights of the bank. There was no privity of agreement between F. H. A. and Pioneer Auto Laundry. The bankrupt made no agreement in any way to pay F. H. A. the amount of its loan, or any balance due thereon after certain payments had been made to the bank. Had the bankrupt done so, then at least the trustee would have lost one of his contentions, to-wit, that even if F. H. A. was and is the United States, it can only be subrogated to the rights of the bank.

“IS FEDERAL HOUSING ADMINISTRATION  
THE UNITED STATES?

“The act under which the claim arises is called the National Housing Act and was ‘to encourage improvement in housing standards and conditions; to provide a system of mutual mortgage insurance, and for other purposes.’ Under Section (1) the President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator who shall be appointed by the President, by and with the advice and consent of the Senate,’ etc. Under this same section it is provided that ‘The Administrator shall, in carrying out the provisions of this title and in titles (2) and (3), be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, state or federal.’ Thus the Federal Housing Administrator is stripped of any rights of sovereignty in acting under the provisions of this act.

“Under Section (2) of the Act the Administrator is authorized and empowered, among other things, to insure banks, and to purchase obligations representing loans and advances of credit made by the banks.

“In the instant case it would appear from the exhibits attached to the claim that the loan by the bank was insured by F. H. A., and this being the case, under general law, the insurer is subrogated to the rights of the insured, to-wit, Seaboard National Bank.

“Although out of order, the Referee desires to call attention to the two letters of December 8th and Decem-



ber 12th, 1934, addressed to the bank by Pioneer Auto Laundry in connection with an application for the loan.

“Section (4) of the Act provides:

“‘For the purpose of carrying out the provisions of this title and titles (2) and (3), the Reconstruction Finance Corporation shall make available to the Administrator such funds as he may deem necessary,’ etc., etc.

“The government seemed to urge that this was significant on the theory that the Reconstruction Finance Corporation was clearly the United States.

“Reference to §§ 601 and 602 United States Codes, Annotated, Title 15, will show that Reconstruction Finance Corporation was created as a body corporate, the capital stock of Five Hundred Million Dollars to be subscribed to by the United States. This act provided that monies by R. F. C. be deposited with the Treasurer of the United States, but there was no provision that interest be paid thereon. However, §206 of National Housing Act provides, in part:

“‘Monies, in the event not needed for the current operations of the Federal Housing Administration, shall be deposited in the Treasury of the United States, to the credit of the fund, or invested in bonds or other obligations of the United States. The Treasurer of the United States is hereby directed to pay interest semiannually on any amount so deposited at a rate not greater than the prevailing rate on long-term government bonds.’ etc., etc

“It seems an inconsistency if Federal Housing Administration IS the United States that the United States

should pay it interest on its deposits made in the Treasury of the United States.

“Under §208 we find exemption as to taxation in the following way:

“‘Nothing in this title shall be construed to exempt any real property acquired and held by the Administrator under this title from taxation by any state or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.’

The property of the sovereign—United States—can not be taxed; but, according to the National Housing Act, a Federal Housing Administrator can be taxed.

“It was your Referee’s opinion that Federal Housing Administration has a legal status separate and distinct from the United States, with the power of suing and being sued in any court of competent jurisdiction in the United States, state or federal; and as such is not entitled to the claim of priority under provisions of §3466 of the United States Revised Statutes, and furthermore that if F. H. A. was actually and clearly the United States, it had no claim at the time of the filing of the bankruptcy petition and can, therefore, only be subrogated to whatever rights can be claimed by Seaboard National Bank. Your Referee feels that priority in a case like this would operate severely on honest creditors and would open the door to fraud and collusion among collectors and debtors to the United States. The government by a secret purchase might, or possibly could, suddenly step in as assignee of any claims and sweep all of a debtor’s property

beyond the reach of their creditors. This will be the result in the instant case if the claim is allowed as entitled to priority of payment.

“I hand up herewith for the information of the Judge the following papers:

“(1) Claim of Federal Housing Administration \$1579.78.

“(2) Petition for Review.

“(3) Order of June 17, 1936, disallowing claim of Federal Housing Administrator.

“Dated at Los Angeles, in the Southern District of California, this 5th day of August, 1936.

“Respectfully submitted,

“HUGH L. DICKSON

“Referee in Bankruptcy.”

That said matter came on for hearing before the Honorable William P. James, United States District Judge, who thereafter, on the 16th day of October, 1936, rendered his opinion herein, which reads as follows:

[TITLE OF COURT AND CAUSE]

“The referee in bankruptcy held that the claim of Federal Housing Administrator in the sum of \$1579.78 should be allowed as a general claim against the bankrupt estate. The Administrator brought his petition to review the order of the referee, making the contention that the claim should be allowed as for the United States and with right of preferential payment as against all unsecured creditors. The matter has been submitted on

briefs by respective counsel. The referee in his certificate set forth quite completely the reasons for his conclusions. After a careful study of the matter, I am of the view that in the circumstances as shown, the Administrator was not entitled to be preferred as against other unsecured creditors in the payment of his claim, and that the finding of the referee should be approved. It seems highly important that an appeal be taken, as I understand the same question is presented in several cases pending before the referees in this county, there being no definite decision of any appellate court to furnish a guide for action. The trustees in bankrupt estates have considerable responsibility in their duty to determine and allow claims for preference when properly made on behalf of the United States. An interesting decision on this subject is *U. S. v. Kaplan*, 74 Fed. (2d) 664, (C. C. A. 2nd).

“The prayer of the petition on review is denied, and the conclusions of the referee are confirmed and approved. An exception is noted in favor of the Federal Housing Administrator.

Dated October 16, 1936.

WM. P. JAMES

U. S. District Judge.”

After said Court rendered its decision, and within the time and in the form and manner provided by law the claimant perfected its appeal from said order of the District Court made and entered on the 16th day of October, 1936, to the United States Circuit Court of Appeals for the Ninth Circuit, such appeal having been allowed by

said Court, a Citation having been issued after appellant had filed its petition for the allowance of the appeal, together with its Assignments of Error.

IT IS HEREBY STIPULATED AND AGREED that the foregoing agreed statement of the case is true and correct, and that all of the facts therein stated concerning the record may be regarded as true by the United States Circuit Court of Appeals for the Ninth Circuit and shall be taken and deemed by the Court as made pursuant to Equity Rule 77.

Dated: December 16th, 1936.

PEIRSON M. HALL,  
United States Attorney,  
ROBERT W. DANIELS,  
ROBERT WINFIELD DANIELS,  
Asst. United States Attorney,  
Attorneys for Claimant and  
Appellant.

CRAIG & WELLER,  
By J. P. Keleher,  
J. P. Keleher,  
Attorneys for Trustee in  
Bankruptcy.

The foregoing agreed statement of the case is hereby approved, and

IT IS ORDERED that such statement be filed with the Clerk of the above-entitled Court and that a certified

copy thereof be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: December 18, 1936.

WM. P. JAMES

United States District Judge.

(Endorsed): Filed Dec 18, 1936 at 9:23 A.M. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

#### ORDER AFFIRMING ORDER OF REFEREE

The referee in bankruptcy held that the claim of Federal Housing Administrator in the sum of \$1579.78 should be allowed as a general claim against the bankrupt estate. The Administrator brought his petition to review the order of the referee, making the contention that the claim should be allowed as for the United States and with right of preferential payment as against all unsecured creditors. The matter has been submitted on briefs by respective counsel. The referee in his certificate set forth quite completely the reasons for his conclusions. After a careful study of the matter, I am of the view that in the circumstances as shown, the Administrator was not entitled to be preferred as against other unsecured creditors in the payment of his claim, and that the findings of the referee should be approved. It seems highly important that an appeal be taken, as I understand the same question is presented in several cases pending before the referees in this county, there being no definite decision of any appellate court to furnish a guide for action. The trustees in bankrupt estates have considerable responsibility in their duty to determine and

allow claims for preference when properly made on behalf of the United States. An interesting decision on this subject is *U. S. v. Kaplan*, 74 Fed. (2d) 664, (C. C. A. 2nd).

The prayer of the petition on review is denied, and the conclusions of the referee are confirmed and approved. An exception is noted in favor of the Federal Housing Administrator.

Dated October 16, 1936.

WM. P. JAMES

U. S. District Judge.

(Endorsed): Filed Oct 16 1936 3:45 P. M. R. S. Zimmerman, Clerk. By Murray E. Wise, Deputy Clerk.

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[TITLE OF COURT AND CAUSE]

PETITION FOR APPEAL

Now comes the Federal Housing Administrator, in his official capacity, acting for and on behalf of the United States of America, and feeling aggrieved by the judgment entered herein on the 16th day of October, 1936, confirming the order of the Referee in Bankruptcy of June 17, 1936, and disallowing the said claim of the United States as a preferred claim arising out of its insurance of loans for modernization of property as provided under the National Housing Act, prays that this Appeal be allowed, that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such

Court in such cases made and provided, and in connection with this Petition your Petitioner presents Assignments of Error dated October 26, 1936.

PEIRSON M. HALL,  
 United States Attorney,  
 ROBERT W. DANIELS,  
 ROBERT WINFIELD DANIELS,  
 Asst. United States Attorney,  
 Attorneys for Appellant.

(Endorsed): Filed Oct 26, 1936 at 4:33 P.M. R. S. Zimmerman, Clerk. F. Betz, Deputy Clerk.

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[TITLE OF COURT AND CAUSE]

ORDER ALLOWING APPEAL.

Upon reading and filing the Petition of the Federal Housing Administrator on behalf of the United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, and Robert Winfield Daniels, Assistant United States Attorney for said District, for an Order allowing Appeal from the written order of this Court entered on the 16th day of October, 1936, disallowing the claim of the Federal Housing Administrator on behalf of the United States of America under an insured Modernization Loan note as a preferred claim of the United States of America,

IT IS HEREBY ORDERED that said appeal from said judgment to the said United States Circuit Court of Appeals for said Ninth Circuit be, and the same is, hereby allowed to said claimant and creditor Federal Housing Administrator on behalf of the United States



of America, and that a certified transcript of the record, exhibits, statement of evidence, or statement of the case in lieu of record, stipulations, pleadings and all proceedings herein, be transmitted to said United States Circuit Court of Appeals.

Dated: October 26, 1936.

WM. P. JAMES,  
United States District Judge.

(Endorsed): Filed R. S. Zimmerman, Clerk Oct 26, 1936 at 4:33 P. M. F. Betz, Deputy Clerk.

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IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

In the Matter of

PIONEER AUTO LAUNDRY, a corporation,  
Bankrupt.

No. 26120-J Bankruptcy.

ASSIGNMENTS OF ERROR.

Now comes the Federal Housing Administrator on behalf of the United States of America, and makes and files the following Assignments of Error on appeal from the Order of the District Court of the United States for the Southern District of California, Central Division, entered on the 16th day of October, 1936.

I.

The Court erred in affirming the Order of the Referee in Bankruptcy dated June 17, 1936, by which order of

the Referee it was found that the Federal Housing Administration is an independent entity and that it has no sovereign attributes of the United States of America.

## II.

The Court erred in affirming the finding of the Referee in Bankruptcy that the claim of the Federal Housing Administrator was not a claim on behalf of the United States, and was entitled to be allowed only as a general claim.

## III.

The Court erred in not reversing the decision of the Referee in Bankruptcy of June 17, 1936, that said claim was not a preferred claim of the United States of America.

Dated: October 26, 1936.

PEIRSON M. HALL,  
 United States Attorney,  
 ROBERT W. DANIELS,  
 ROBERT WINFIELD DANIELS,  
 Asst. United States Attorney,  
 Attorneys for Appellant.

(Endorsed): Filed R. S. Zimmerman, Clerk Oct 26, 1936 at 4:33 P.M. By F. Betz, Deputy Clerk.

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[TITLE OF COURT AND CAUSE]

### STIPULATION FOR CONTENTS OF RECORD ON APPEAL

IT IS HEREBY STIPULATED by and between the parties hereto that the Clerk of the Court in making up the record on appeal herein to the United States Circuit

Court of Appeals for the Ninth Circuit, from an Order of this Court made on October 16, 1936, affirming on review the Order of the Referee in Bankruptcy disallowing the claim of the Federal Housing Administrator on behalf of the United States of America as a prior and preferred claim but allowing it as a general claim, shall include the following papers only:

1. Agreed statement of the case;
2. The order of October 16, 1936, affirming order of the Referee;
3. Petition for appeal and order allowing same;
4. Assignments of error.
5. Citation on appeal.

IT IS FURTHER STIPULATED that the whole title of the Court and Cause shall be omitted except in connection with the agreed statement of the case, and shall be referred to only as "Title of Court and Cause."

Dated this 16th day of December, 1936.

PEIRSON M. HALL,  
United States Attorney,  
ROBERT W. DANIELS,  
ROBERT WINFIELD DANIELS,  
Asst. United States Attorney,  
Attorneys for Appellant and  
Claimant.

CRAIG & WELLER,  
By J. P. Keleher,  
Attorneys for Trustee in  
Bankruptcy.

(Endorsed): Filed Dec 18 1936 at 9:23 A. M. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk.

## CLERK'S CERTIFICATE

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing Transcript containing 37 pages numbered from 1 to 37, inclusive, to be the Transcript of Record on appeal in the within entitled action, as printed by appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me, and contains full, true and correct copies of the original documents, as follows:

Citation

Agreed Statement of the Case in Lieu of Record  
Pursuant to Equity Rule 77

Stipulation for Contents of Record on Appeal  
Order of October 16, 1936, Affirming Order of the  
Referee

Petition for Appeal

Order Allowing Appeal

Assignments of Error

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States, in and for the Southern District of California, this ..... day of December, in the year of our Lord One Thousand Nine Hundred Thirty Six, and of Our Independence the One Hundred and Sixty-First.

(SEAL)

R. S. ZIMMERMAN,

Clerk of the District Court of the United  
States, in and for the Southern District  
of California,

By.....

Deputy Clerk.